

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES WHORTON,

Plaintiff,

v.

ROGGENBUCK ET AL.,

Defendants.

Case No. 16-cv-13885

UNITED STATES DISTRICT COURT
JUDGE
GERSHWIN A. DRAIN

UNITED STATES MAGISTRATE JUDGE
ANTHONY P. PATTI

**ORDER ACCEPTING AND ADOPTING REPORT AND
RECOMMENDATION [#36] GRANTING DEFENDANTS' MOTION TO
DISMISS [#23]**

I. INTRODUCTION

This matter is before the Court on Defendants Kim Farris and Shanthi Gopal's Motion to Dismiss. Dkt. No. 23. This Court referred the matter to Magistrate Judge Anthony P. Patti on June 15, 2017. Dkt. No. 24. Magistrate Judge Patti issued a Report and Recommendation on November 7, 2017, recommending that the Court grant Defendants' Motion to Dismiss. Dkt. No. 36. On December 6, 2017, Plaintiff filed an objection. Dkt. No. 38. Plaintiff filed his objection after the time for filing objections had expired. *See* 28 U.S.C. § 636(b)(1)(C). Therefore, the Court is not required to consider Plaintiff's objection and can solely review the Report and Recommendation for clear error. *See Griffin v. Heigler*, No. 16-CV-

10071, 2017 WL 4163681, at *1 (E.D. Mich. Sept. 20, 2017). However, the Court will consider Plaintiff's objection. For the reasons discussed below, the Court accepts and adopts the Magistrate Judge's recommendation and dismisses Plaintiff's complaint against Defendants Farris and Gopal.

II. ANALYSIS

This Court employs "a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636 (b)(1)(C). This Court "may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* However, when objections are "merely perfunctory responses . . . rehashing . . . the same arguments set forth in the original petition, reviewing courts should review [a Report and Recommendation] for clear error." *Ramirez v. U.S.*, 898 F. Supp. 2d 659, 663 (S.D.N.Y. 2012).

Objection One

Plaintiff incorporates paragraphs 1–27 of his complaint in his first objection. Dkt. No. 38, pg. 3 (Pg. ID 253). This objection re-alleges the same argument that Plaintiff stated in his complaint: that he was subjected to cruel and unusual punishment by Defendants. *See id.* Magistrate Judge Patti's Report and Recommendation addressed the arguments set forth in Plaintiff's original complaint. This objection does not advance any new, specific argument to the

Report and Recommendation. Therefore, the Court will not consider this an objection. The Court will consider this argument when it reviews the Report and Recommendation for clear error.

Objection Two

Objection two argues that Plaintiff exhausted his administrative remedies. Dkt. No. 38, pg. 4 (Pg. ID 254). Therefore, it is proper for this Court to hear the present action. *Id.* However, Magistrate Judge Patti's Report and Recommendation does not state that Plaintiff failed to exhaust his administrative remedies. *See* Dkt. No. 36, pg. 5–6 (Pg. ID 237–38). Therefore, this objection is not warranted and the Court will not address this objection.

Objection Three

What is labeled as Plaintiff's objection three does not state an objection. Plaintiff discusses damages. Dkt. No. 38, pg. 5 (Pg. ID 255). Therefore, the Court will not consider this an objection.

Objection Four

Objection four restates Plaintiff's claim from his complaint that defendants acted with deliberate indifference. Dkt. No. 38, pg. 6 (Pg. ID 256). This restates the same argument that Plaintiff made in his complaint. Because this objection does not advance any new argument, the Court will consider this when it reviews the Report and Recommendation for clear error.

Objection Five

What is labeled as Plaintiff's objection five does not state an objection. Plaintiff states the standard for motions to dismiss and nothing more. Dkt. No. 38, pg. 9 (Pg. ID 259). Therefore, the Court will not consider this an objection.

III. CONCLUSION

Upon review of the parties' briefing and the Magistrate Judge's Report and Recommendation, the Court concludes that the Magistrate Judge reached the correct conclusion. Accordingly, Plaintiff's objection [#38] is OVERRULED. The Court hereby ACCEPTS AND ADOPTS Magistrate Judge Anthony P. Patti's November 7, 2017 Report and Recommendation and DISMISSES Plaintiff's complaint against Defendants Farris and Gopal.

SO ORDERED.

Dated: December 11, 2017

s/Gershwin A. Drain
HON. GERSHWIN A. DRAIN
United States District Court Judge